



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,753	02/06/2002	Abraham Amir	02/23230	4762

7590 05/29/2003

G.E. EHRLICH (1995) LTD.
c/o ANTHONY CASTORINA
SUITE 207
2001 JEFFERSON DAVIS HIGHWAY
ARLINGTON, VA 22202

EXAMINER

COE, SUSAN D

ART UNIT	PAPER NUMBER
----------	--------------

1654

8

DATE MAILED: 05/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,753

Applicant(s)

AMIR ET AL.

Examiner

Susan Coe

Art Unit

1654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 17 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 9-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed March 17, 2003, has been received and entered. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 1-14 are pending.
3. In Paper No. 5, dated November 25, 2002, applicants elected of Group I, claims 1-8, without traverse.
4. Claims 9-14 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.
5. Claims 1-8 are examined on the merits.

Claim Rejections - 35 USC § 102

6. Claims 1, 2, and 7-8 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 4,469,676 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach the claimed invention because the reference does not teach using isolated chondrocytes or chondrocyte progenitors. However, applicant is arguing limitations that are not in the claims. None of the claims state that the chondrocytes or chondrocyte progenitors are isolated. Applicant acknowledges that the composition of cartilage cells used in the reference would contain chondrocytes and chondrocyte progenitors (see first full paragraph on page 3 of the response filed March 17, 2003). Therefore, the reference is considered to properly anticipate the claims

Art Unit: 1654

because the reference teaches a method of repairing a skin irregularity by introducing a suspension that contains cartilage producing cells.

7. Claims 1-5 are rejected under 35 U.S.C. 102(b) as being anticipated by Park et al. (Facial Plastic Surgery (1995), vol. 11, no. 4, pp. 278-283) for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach the claimed invention because the reference does not teach using "template-free" cells. However, applicant's claims only require that the cartilage producing cells are in suspension. Merriam-Webster's Collegiate Dictionary (10th edition, 1997) defines a "suspension" as "the state of a substance when its particles are mixed with but undissolved in a fluid or solid" and "a system consisting of a solid dispersed in a solid... (see page 1187)." Since the reference teaches that the chondrocytes are seeded into the mesh template and then incubated to allow the cells to grow and adhere to the template (see paragraph spanning pages 280 and 281), the reference is considered to teach a suspension of chondrocytes in that the cells are mixed with a solid.

8. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Kim et al. (Plastic and Reconstructive Surgery (1994), vol. 94, no. 2, pp. 233-237) for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not teach the claimed invention because the reference does not teach using "isolated non-engineered cells." However, applicant's claims only require that the cartilage producing cells are in suspension. The

chondrocytes used in the reference are used in a manner similar to Park. Therefore, this reference is considered to anticipate the claims for the reasons discussed above for Park.

Claim Rejections - 35 USC § 103

9. Claims 1, 2, 4, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,469,676 for the reasons set forth in the previous Office action.

Applicant has not specifically addressed this rejection in the response. Therefore, this rejection is considered valid for the reasons discussed above and in the previous Office action.

10. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Park et al. for the reasons set forth in the previous Office action.

Applicant has not specifically addressed this rejection in the response. Therefore, this rejection is considered valid for the reasons discussed above and in the previous Office action.

11. Claims 1, 2, and 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al. for the reasons set forth in the previous Office action.

Applicant has not specifically addressed this rejection in the response. Therefore, this rejection is considered valid for the reasons discussed above and in the previous Office action.

12. No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1654

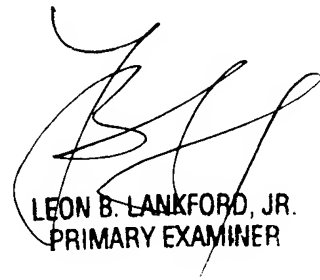
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (703) 306-5823. The examiner can normally be reached on Monday to Thursday from 8:00 to 5:30 and on alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Brenda Brumback, can be reached on (703) 306-3220. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Susan Coe, Examiner
May 19, 2003



LEON B. LANKFORD, JR.
PRIMARY EXAMINER